

November 16, 1948

Reid Ellsworth, Special Assistant
State Land Department
Capitol Annex
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Ellsworth:

We have your letter of November 12th requesting an opinion from this office regarding the constitutionality of Section 5, 11-409 of the proposed reclassification bill. Section 5 of the proposed bill reads as follows:

"11-409. REGULATION OF SALE.
The Commissioner, or his representative, shall attend at the time and place fixed for said sale, and proceed by first reading the notice published, then calling for bids and selling said lands for the highest and best bid therefor, EXCEPT THAT IN THE EVENT OF THE SALE OF LEASED LANDS THE LESSEE SHALL HAVE FINAL RIGHT TO PURCHASE AT THE HIGHEST BID OFFERED, PROVIDED HE BE ELIGIBLE IN ALL OTHER RESPECTS; and make a written report thereof. The sale may be adjourned from day to day, or the Commissioner may dissolve the sale and readvertise said lands."

We are of the opinion that this section will be unconstitutional as a violation of Section 28 of the Enabling Act, which states in part:

"* * * Said lands shall not be sold or leased, in whole or in part, except to the highest and best bidder at a public auction, etc., * * *"

This provision of the Enabling Act is mandatory and must be strictly adhered to. To give a preference, as proposed to

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the lessee would destroy the principle feature of public auction, which is free and fair competition among bidders.

"An auction is a public sale of property to the highest bidder. The main purpose of auction sales is to obtain the best financial returns for the owner of property sold; and they are based on the purpose and policy of obtaining the worth of property by free and fair competition among the bidders; and hence competition among a number of bidders is a necessary element." 7 C.J.S. 1239.

Therefore, it would seem that the Enabling Act requires any sale of public land to be a true public auction and to allow any one individual a preference would be unconstitutional.

Very truly yours,

EVO De CONCINI
Attorney General

JOSEPH PYLE RALSTON
Assistant Attorney General

JPR:lh